

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERICK PETERSON,

Plaintiff,

v.

MICHAEL MEISNER, JANEL NICKEL,
LON BECHER, TIMOTHY CASIANA, BLOUNT,
NATHAN PRESTON, TRACY KOPFHAMER,
BENJAMIN NEUMAIER, SCOTT ROYCE,
TRAVIS HAAG, HAUTAMAKI, DALIA SULIENE,
MELISSA THORNE, EMILY, KAREN ANDERSON,
JOANNE LANE, CINDY FRANCOIS,
CINDY O'DONNELL, DEIRDNE MORGAN,
CHARLES COLE, DENNIS SCHUH,
CHARLES FACKTOR, DENNIS RICHARDS, and
ALEXANDER AGNEW,

Defendants.

ORDER

15-cv-49-jdp

On May 17, 2016, the court issued an order informing the parties that defendant Charles Cole is deceased and explaining that if no party moves to substitute defendant Cole's estate by August 10, 2016, the court will dismiss plaintiff's claim against him. Dkt. 16.

Now plaintiff has filed a motion to substitute. Dkt. 28. But plaintiff does not move to substitute defendant Cole's estate; rather, he requests that the court replace Cole with "the next complaint examiner in Madison." *Id.* at 1. But plaintiff misunderstands the court's order and the rules governing substitution. "If a party dies and the claim is not extinguished, the court may order substitution of the proper party." Fed. R. Civ. P. 25(a)(1). The "proper party" is "ordinarily the personal representative of the party who has died." *Atkins v. City of Chicago*, 547 F.3d 869, 870 (7th Cir. 2008). As the court stated in its previous order, plaintiff, or any other party to this case, will need to identify and move to substitute *a proper*

party—likely Cole’s estate or personal representative. Plaintiff cannot simply transfer his claim against Cole to another complaint examiner who played no role in denying plaintiff’s grievances. The claim plaintiff brings against Cole arises from actions Cole allegedly personally took, not from his position generally.

ORDER

IT IS ORDERED that plaintiff Erick Peterson’s motion to substitute, Dkt. 28, is DENIED. As stated in the court’s previous order, Dkt. 16, if no party moves to substitute defendant Charles Cole’s *estate* as a defendant by August 10, 2016, I will dismiss defendant Cole from the case.

Entered July 8, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge